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## State v. Diaz Appellant's Brief Dckt. 44298

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 44298
Plaintiff-Respondent,	)	
	)	ADA COUNTY NO. CR 2015-9083
v.	)	
	)	
DAXX E. DIAZ,	)	APPELLANT’S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Daxx E. Diaz was sentenced to a unified term of thirteen years, with eight years fixed, for operating a motor vehicle while under the influence of alcohol or drugs (“DUI”), having two or more convictions within ten years, with a persistent violator enhancement. He contends the district court abused its discretion when it imposed this sentence upon him considering the mitigating factors that exist in this case—most significantly, the fact that he had taken prescription medications prior to the offense, and did not engage in driving behavior that posed any risk of danger to himself or others.

## Statement of the Facts & Course of Proceedings

Mr. Diaz was charged by Information with felony DUI, misdemeanor driving without privileges, and misdemeanor possession of a controlled substance (marijuana). (R., pp.58-59.) The State filed an Information Part II alleging Mr. Diaz is subject to a persistent violator enhancement. (R., pp.143-44, 151.) Mr. Diaz pled guilty to the two misdemeanor charges prior to trial, and proceeded to trial on the felony DUI charge. (Tr., p.30, Ls.2-6, p.35, L.25 – p.36, L.5.)

Mr. Diaz testified that, on the morning of June 24, 2015, he was homeless, and had spent the morning sleeping in his car. (Tr., p.365, L.13 – p.366, L.12, p.385, Ls.10-15.) When he woke up, he took his medications—Lexapro<sup>1</sup> and Balsalazide<sup>2</sup>—and smoked marijuana. (Tr., p.366, Ls.13-14, p.368, Ls.11-14.) He took a shower at a shelter, and then went to the library to work on his resume. (Tr., p.366, L.21 – p.367, L.6.) He applied for employment at a number of restaurants, and was offered a position. (Tr., p.367, Ls.14-17, p.369, Ls.8-10.) At some time before 2:00 p.m., Mr. Diaz took what he believed to be Buspar<sup>3</sup> for anxiety. (Tr., p.384, Ls.1-8.) At approximately 3:00 p.m., Mr. Diaz went to a friend's house to have "a celebratory beer." (Tr., p.369, Ls.11-21.) He drank less than two beers. (Tr., p.380, L.5 – p.381, L.19.) Mr. Diaz then drove from Boise to Meridian, when he hit something that jerked his wheel

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<sup>1</sup> Lexapro is a selective serotonin reuptake inhibitor (SSRI) used to treat depression and anxiety. See Lexapro at <https://www.drugs.com/lexapro.html> (last visited March 30, 2017).

<sup>2</sup> Balsalazide is a medication used to treat the pain and inflammation caused by active ulcerative colitis. See Balsalazide at <https://www.drugs.com/pro/balsalazide.html> (last visited March 30, 2017).

<sup>3</sup> Buspar is an anti-anxiety medication used to treat symptoms of anxiety. See Buspar at <https://www.drugs.com/buspar.html> (last visited March 30, 2017).

to the right. (Tr., p.370, Ls.8-21.) He exited the highway at Eagle Road, and drove into a subdivision to check his alignment. (Tr., p.370, L.16 – p.371, L.14.)

An eyewitness observed Mr. Diaz driving erratically through the subdivision, and called 911. (R., p.80.) The eyewitness followed Mr. Diaz's vehicle, and Mr. Diaz came to a stop on the grass alongside the roadway. (Tr., p.373, Ls.1-18.) Mr. Diaz testified he handed over his keys to the eyewitness because he did not have a driver's license and did not want the police to become involved. (Tr., p.372, Ls.17-20.) A police officer arrived on scene and Mr. Diaz told the officer his car was malfunctioning. (R., p.80.) Mr. Diaz failed a field sobriety test and was arrested on suspicion of DUI. (R., p.81.) His breath alcohol level was measured at .070 and .061 (deficient). (R., p.81.) Another police officer conducted a drug recognition exam and concluded Mr. Diaz was under the influence of cannabis, a central nervous system depressant, and alcohol. (R., p.81.)

Following a two-day trial, a jury found Mr. Diaz guilty of DUI. (R., p.200.) Mr. Diaz admitted to having two prior convictions for DUI within ten years, and pled guilty to being a persistent violator. (Tr., p.462, Ls.19-24, p.464, Ls.11-14.) Mr. Diaz did not agree to participate in a presentence investigation, and a presentence investigation report was not prepared prior to sentencing. (Tr., p.464, Ls.17-22; 5/20/16 Tr., p.6, Ls.17-20.)

At sentencing, the State recommended a unified sentence of fifteen years, with ten years fixed, and without a period of retained jurisdiction. (5/20/16 Tr., p.6, L.24 – p.7, L.7.) Counsel for Mr. Diaz recommended a unified sentence of ten years, with two years fixed, and with a period of retained jurisdiction. (5/20/16 Tr., p.16, Ls.16-20.) The district court sentenced Mr. Diaz as follows: for driving without privileges, 180 days in

Ada County Jail; for misdemeanor possession of a controlled substance, one year in Ada County Jail; for felony DUI with a persistent violator enhancement, a unified term of thirteen years, with eight years fixed. (5/20/16 Tr., p.31, Ls.1-20; R., pp.202-03.) The district court retained jurisdiction. (5/20/16 Tr., p.31, Ls.21-22; R., p.204.) The judgment of conviction was entered on May 23, 2016, and Mr. Diaz filed a timely notice of appeal on June 23, 2016. (R., pp.203-07, 208-10.)

The district court held a rider review hearing on January 20, 2017. The State recommended relinquishment. (1/20/17 Tr., p.13, Ls.5-10.) Counsel for Mr. Diaz recommended probation, stating Mr. Diaz “can be a success out there” and is “plenty smart.” (1/20/17 Tr., p.16, Ls.9-12.) Mr. Diaz explained to the district court that he has a history of controlled substance possession, but is not dangerous. (1/20/17 Tr., p.17, Ls.21-25.) He pointed out he had no issues on his rider apart from “giving commissary and doing pushups in the tier.” (1/20/17 Tr., p.21, Ls.9-14.) The district court relinquished jurisdiction over Mr. Diaz, but *sua sponte* reduced the fixed portion of his sentence from eight years to five years. (1/20/17 Tr., p.24, L.21 – p.25, L.8.)

### ISSUE

Did the district court abuse its discretion when it sentenced Mr. Diaz to a unified term of thirteen years, with eight years fixed, for felony DUI, which it later reduced to thirteen years, with five years fixed?

## ARGUMENT

### The District Court Abused Its Discretion When It Sentenced Mr. Diaz To A Unified Term Of Thirteen Years, With Eight Years Fixed, For Felony DUI, Which It Later Reduced To Thirteen Years, With Five Years Fixed

Mr. Diaz asserts that, given any view of the facts, the district court abused its discretion when it sentenced him to a unified term of thirteen years, with eight years fixed, for felony DUI, which it later reduced to thirteen years, with five years fixed. Where, as here, the sentence imposed by the district court is within statutory limits, “the appellant bears the burden of demonstrating that it is a clear abuse of discretion.” *State v. Williams*, 151 Idaho 828, 834 (2011) (quoting *State v. Windom*, 150 Idaho 873, 875 (2011)). “When a trial court exercises its discretion in sentencing, ‘the most fundamental requirement is reasonableness.’” *Id.* (quoting *State v. Hooper*, 119 Idaho 606, 608 (1991)). “A sentence is reasonable if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation or retribution.” *Id.* (citation omitted). “When reviewing the reasonableness of a sentence this Court will make an independent examination of the record, ‘having regard to the nature of the offense, the character of the offender and the protection of the public interest.’” *Id.* (quoting *State v. Shideler*, 103 Idaho 593, 594 (1982)).

The sentence imposed upon Mr. Diaz by the district court was not reasonable considering the nature of his offense, and was not necessary to protect the public interest. Mr. Diaz was arrested on suspicion of driving under the influence after he drove very slowly through a subdivision in Meridian, and an eager eyewitness called 911 and demanded Mr. Diaz's car keys. (R., p.80; Tr. p.372, Ls.17-20.) Mr. Diaz had

taken prescription medications earlier in the day, and had consumed a small amount of marijuana and less than two beers prior to driving. (Tr., p.366, Ls.13-14, p.368, Ls.11-14, p.380, L.5 – p.381, L.19, p.384, Ls.1-8.) His driving behavior did not pose a risk of danger to himself or others, and he was non-violent despite the aggressive intervention of the eyewitness. Mr. Diaz did plead not guilty to the offense because he believed, and continues to believe, that he was not under the influence of any intoxicating substances while driving. (Tr., p.412, Ls.2-15; 5/20/16 Tr., p.25, L.24 – p.26, L.3.) The circumstances of the offense simply do not warrant the sentence imposed.

The sentence imposed upon Mr. Diaz was also not reasonable considering his character. Although only 39 years old at the time he committed the instant offense, Mr. Diaz had been incarcerated for thirteen years. (5/20/16 Tr., p.20, Ls.15-20.) Despite this lengthy period of incarceration, Mr. Diaz attended culinary school and is highly employable. (5/20/16 Tr., p.19, Ls.9-11.) In fact, he obtained employment the very day he was arrested for DUI. (Tr., p.367, Ls.14-17, p.369, Ls.8-10.) Counsel for Mr. Diaz told the district court that Mr. Diaz “has good potential” and “is clearly smart” and “clearly motivated.” (5/20/16 Tr., p.19, Ls.9-10, p.20, Ls.21-23.) Counsel asked the court not to “give up on Mr. Diaz” and argued that “warehousing him down at the penitentiary is not warranted in this case.” (5/20/16 Tr., p.21, Ls.9-12.) Mr. Diaz told the district court he was not guilty of driving under the influence and “was on medication that the State told [him] to take.” (5/20/16 Tr., p.25, L.24 – p.26, L.3.)

In light of the mitigating factors that exist in this case, and notwithstanding the aggravating factors, the district court abused its discretion when it imposed upon Mr. Diaz a unified sentence of thirteen years, with eight years fixed, for felony DUI,

which it later reduced to thirteen years, with five years fixed. This sentence was not warranted by the nature of the offense Mr. Diaz committed or by his character, and is not necessary to protect the public interest.

#### CONCLUSION

Mr. Diaz respectfully requests that this Court reduce his sentence as it deems appropriate or remand this case to the district court for a new sentencing hearing.

DATED this 3<sup>rd</sup> day of April, 2017.

\_\_\_\_\_/s/\_\_\_\_\_  
ANDREA W. REYNOLDS  
Deputy State Appellate Public Defender



CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 3<sup>rd</sup> day of April, 2017, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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MELISSA MOODY  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

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CRIMINAL DIVISION  
E-MAILED BRIEF

\_\_\_\_\_/s/\_\_\_\_\_  
EVAN A. SMITH  
Administrative Assistant

AWR/eas